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Preliminary report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33

CONTENTS

	Paragraphs	Page
Introduction	1 - 9	3
I. WORK ON EDUCATION WITHIN THE UNITED NATIONS SYSTEM	10 - 41	5
A. Creating a common language	12 - 19	5
B. Strategies to achieve universal primary education	20 - 24	8
C. Quantitative and qualitative data necessary for monitoring the right to education	25 - 31	10
D. Financial obstacles impeding access to primary education	32 - 41	11

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CONTENTS (continued)

		Paragraphs	Page
II.	GOVERNMENTAL OBLIGATIONS COROLLARY TO THE RIGHT TO EDUCATION: A TENTATIVE ANALYTICAL SCHEME . . .	42 - 74	15
	A. Availability	51 - 56	18
	B. Accessibility	57 - 61	20
	C. Acceptability	62 - 69	22
	D. Adaptability	70 - 74	23
III.	COMPULSORY EDUCATION: RIGHT AND DUTY OF THE CHILD	75 - 79	26
IV.	CONCLUDING REMARKS	80 - 81	28

LIST OF TABLES

1.	Bilateral aid for education	9
2.	Public expenditure on education in relation to GNP	12
3.	Primary education: specific human rights guarantees	16
4.	Gender imbalance in net enrolment in primary school	19
5.	Percentage of primary school teachers who are female	25
6.	Compulsory education	27

Introduction

1. The mandate of the Special Rapporteur on the right to education was defined by the Commission on Human Rights in its resolution 1998/33 of 17 April 1998 as follows:

"(i) To report on the status, throughout the world, of the progressive realization of the right to education, including access to primary education, and the difficulties encountered in the implementation of this right, taking into account information and comments received from Governments, organizations and bodies of the United Nations system, other relevant international organizations and non-governmental organizations;

"(ii) To promote, as appropriate, assistance to Governments in working out and adopting urgent plans of action, wherever they do not exist, to secure the progressive implementation, within a reasonable number of years, of the principle of compulsory primary education free of charge for all, bearing in mind, inter alia, levels of development, the magnitude of challenge and efforts by Governments;

"(iii) To take into account gender considerations, in particular the situation and needs of the girl child, and to promote the elimination of all forms of discrimination in education;

"(iv) To make his or her reports available to the Commission on the Status of Women whenever they concern the situation of women in the field of the right to education;

"(v) To develop a regular dialogue and discuss possible areas of collaboration with relevant United Nations bodies, specialized agencies and international organizations in the field of education, inter alia, United Nations Educational, Scientific and Cultural Organization, United Nations Children's Fund, United Nations Conference on Trade and Development, and United Nations Development Programme and with international financial institutions, such as the World Bank;

"(vi) To identify possible types and sources of financing for advisory services and technical cooperation in the field of access to primary education;

"(vii) To ensure, to the extent possible, coordination and complementarity with the work carried out in the framework of Sub-Commission resolution 1997/7, in particular the working paper on the right to education by Mr. Mustapha Mehedi."

2. This preliminary report covers the first four months of the Special Rapporteur's work, (August to December 1998). Due to this limited time, the Special Rapporteur did not deem it useful to solicit information from Governments through some type of general request for information or a questionnaire. She thought that a great deal of time and effort would be

saved if she surveyed the information already available within the United Nations system, included the findings in her progress report, and then sought feedback in the form of additional information, comments and suggestions from Governments and other actors identified by the Commission.

3. The Special Rapporteur has started analysing the nature and scope of the right to education in this preliminary report by focusing on the corresponding governmental obligations. Her approach is to discuss these obligations on two levels: on the level of individual States as is customary, and also on the level of intergovernmental structures within which Governments act collectively. The latter raises important and, as yet, unanswered questions about the status of human rights within policies and practices of international development finance agencies and, in a broad sense, within international economic and fiscal policies. Her preliminary analysis of educational strategies focuses on the identification and elimination of obstacles - especially financial - to the realization of the right to education. She plans to deepen and broaden this analytical approach in her progress report. Her objective is to mainstream human rights by integrating the right to education into educational strategies and monitoring mechanisms.

4. The Commission emphasized the need to collaborate with the organizations and bodies of the United Nations system involved in the field of education and regional organizations as well as non-governmental organizations. The Special Rapporteur has therefore started contacting all relevant actors with a view to establishing collaboration.

5. The Special Rapporteur had planned to attend the Symposium on Human Development and Human Rights in Oslo on 2-3 October 1998 but was unfortunately prevented from participating and could only submit a written contribution. She attended a part of the 1998 Innocenti Global Seminar on Education: Basic Education: A Vision for the 21st Century held at the UNICEF International Child Development Centre, Florence, on 27-30 October 1998, and took part in the general discussion on the right to education by the Committee on Economic, Social and Cultural Rights on 30 November 1998. That was followed by her consultations with the Office of the United Nations High Commissioner for Human Rights on 2-3 December 1998. She will report on her subsequent activities at the Commission's fifty-fifth session.

6. The Commission attached priority to primary education, with the explicit objective to contribute to the attainment of compulsory primary education free of charge for all as required by international human rights law. This preliminary report deals only with primary education. The Special Rapporteur plans to include in her subsequent reports also secondary and tertiary education and, if the Commission so wishes, also pre-primary education, maintaining the focus on primary education.

7. Human rights education has been explicitly addressed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in the context of the Decade for Human Rights Education, including in the working paper by Mr. Mustapha Mehedi. 1/ In order to prevent duplication of anything that is already being done, the Special Rapporteur is not addressing issues dealt with therein and plans to take part in the follow-up to this Sub-Commission's initiative so as to ensure coordination of efforts.

8. This preliminary report begins with a brief overview of the work carried out within the United Nations system to enhance access to primary education. An emphasis is on the differences in terminology and underlying concepts and approaches, and the consequent need for the articulation and mainstreaming of the human rights approach to education. The overview ends by highlighting the increasing recognition of the financial obstacles to access to primary education, which serves as a link to the second part of the report, which presents a scheme for the analysis of governmental human rights obligations. One important dimension of education is singled out in the third part: the requirement to make primary education compulsory has been translated into domestic law by many more States than the right to education. Compulsory education, even if all-encompassing, does not necessarily translate into the realization of the right to education, however. A simple but crucial question - what does full realization of the right to education entail? - will thus orientate the work of the Special Rapporteur.

9. Gender considerations have been singled out by the Commission to merit particular attention and the Special Rapporteur has followed the Commission's emphasis by incorporating gender considerations into the body of the report rather than adding them as a separate section at the end.

I. WORK ON EDUCATION WITHIN THE UNITED NATIONS SYSTEM

10. As one person, the Special Rapporteur cannot possibly replicate even a small part of the work done by large international actors like UNESCO or UNICEF or the World Bank. She has interpreted her mandate to be intended to summarize for the Commission results of their work from the human rights perspective and to contribute to their work by furthering the clarification of the right to education so as to encourage their involvement in its further promotion.

11. The Special Rapporteur has established contacts with relevant bodies within the United Nations to familiarize herself with their on-going work as a basis for planning future collaboration. She is planning meetings with UNESCO in January 1999 and with UNICEF, UNDP and the World Bank in February 1999 so as to be able to supplement this report orally at the Commission's fifty-fifth session.

A. Creating a common language

12. The substantive mandate of the Special Rapporteur requires a regular dialogue with relevant United Nations bodies. Its implementation constitutes a considerable challenge because dialogue is impossible without a common language, while such a common language needs to be created. Linguistic variety prevails in the field of education and seems to be increasing. Working towards standardization of educational terminology and statistics on the basis of the right to education will constitute an important part of the Special Rapporteur's work, with the aim to develop strategies and indicators for the realization of the right to education.

13. The prevailing linguistic variety reflects different visions of what education should be. Education can be treated as a means for increasing the individual's earning capacity or for lowering women's fertility rates. Human

rights law specifies the purpose and objective of education, increasingly calling for the mainstreaming of human rights throughout the contents and process of education. From the human rights viewpoint, education is thus an end in itself rather than merely a means for achieving other ends. Some economists may, however, define education as efficient production of human capital and classify all its human rights dimensions as externalities. A definition of people as human capital obviously differs from defining people as subjects of rights. The contrast between the human rights and human-capital approaches is best illustrated by taking children with physical and learning disabilities as an example. The former may be excluded from school because providing wheelchair access, for example, might be deemed too expensive; the latter may be excluded from schooling because meeting their learning needs is deemed not to yield a sufficient marginal return on investment. This type of reasoning obviously challenges the very assumption of human rights, namely the equal worth of all human beings. The Special Rapporteur therefore attaches a great deal of importance to emphasizing differences between education and the right to education so as to create a background for advocating changes within education aimed at conformity with the human rights requirements.

14. Among economists, some might classify governmental funding for education as expenditure, others as investment. Both economists and lawyers may, explicitly or implicitly, define education as a commodity which is traded against a price rather than a right. These divergencies in terms and underlying concepts demonstrate the need for a consistent and comprehensive advocacy for the human rights approach to education so as to integrate human rights into the existing domestic educational policies and laws as well as into international strategies and monitoring mechanisms.

15. The variety of categorizations of levels and types of education further illustrate the need to promote the human rights approach to education. Terms used in worldwide educational strategies have changed with time. In the 1960s, the mobilizing slogan was UPE (Universal Primary Education) and in the 1990s it is EFA (Education for All); universal primary education was planned to be achieved by 1980 and basic education for all by the year 2000. The language of international educational strategies shifted from primary to basic education, different from the continued use of primary education in human rights. The term basic education was introduced by the 1990 Jomtien Conference 2/ and influenced the subsequent international and domestic strategies and statistical categories. UNICEF has affirmed that primary education is the core of basic education, but basic education goes beyond the confines of formal schooling to encompass non-formal education as well as early childhood education, including also "second chance" primary education for youth, adults and parents' education. 3/ Definitions of primary and basic education thus overlap but are not synonymous.

16. The varied terminology of educational strategies is reflected in the associated statistics. As is well known, international statistics do not follow the definition of the child as any person up to the age of 18. In the statistics on literacy, adulthood begins with the age of 15 while domestic laws on education have established a variety of age categorizations. The starting age for compulsory education seems fairly uniform worldwide and is set at 6 or 7, but the duration of primary school varies a great deal. The

duration of compulsory education (dealt with in more detail in Part III) ranges from 3 to 12 years but the age for basic education is 6 to 11 years. There is an obvious mismatch between the 6-11 age categorization for basic education and the original understanding of primary education in the human rights instruments with the 6-15 age range. The logic behind human rights requirements is that the minimum duration of education should extend further than 11 years of age, at least to the minimum age for employment. Another feature of age categorizations is that children above the school-leaving age may be classified as young people rather than children. Moreover, the minimum age for marriage, especially for girls, may also be set low, at 12 for example. The minimum age of criminal responsibility may be set at a low age of 7 or 8. Primary school-age children may thus be found at work, in marriage or in prison rather than at school, while these phenomena are not captured by the existing educational statistics. When not reflected in statistics, such phenomena tend not to be monitored and there is a great deal of risk that their existence will not inform international educational strategies.

17. Yet another area where a common language needs to be created is the equal right to education for girls. The existing quantitative data have identified three facets of the gender gap. The difference in male/female illiteracy rate is a reflection of the heritage of unequal access to education, the difference in male/female enrolment points to continuing unequal access, while the male/female difference in the completion of the full cycle of primary education indicates that getting girls into school does not necessarily lead to their staying at school. Manifestations of gender inequality evidenced by such data highlight the magnitude of the challenge but say nothing about the causes of the problem and gender analysis is thus necessary to identify the causes. The subsequent challenge is to specify the ends to be attained and thereupon the appropriate means, as well as monitoring mechanisms to ascertain whether the means employed are leading to the specified ends and corrective action is employed if this turns out not to be the case.

18. The foundations for responding to this challenge have been established and are embodied in the commitment of the United Nations to "double mainstreaming", namely the incorporation of both gender perspectives and equal human rights of women throughout the United Nations. The Commission on the Status of Women has called for the advocacy for gender equality and the enjoyment by women of their human rights. 4/ The United Nations has committed itself to highlighting "gender-based differences in women's enjoyment of their human rights" and to a rights-based approach to education. 5/ The Commission on the Status of Women invited the UNHCHR "to ensure that the equal status of all human rights of all women and the girl child are integrated into United Nations system-wide activities". 6/ This process involves a considerable conceptual, strategic and operational challenge. 7/

19. International strategies concerning education for girls have thus far alternated between different justifications: meeting girls' needs because these remain unmet to a larger extent than those of boys; enhancing the productivity or lowering the fertility of the future generations of women; and promoting equity or justice. The third justification has sometimes shared the human rights rationale of the equal worth and dignity of all human beings but not necessarily the human rights requirement of the elimination of all forms

of gender discrimination. The interdependence of human rights necessitates looking beyond the sector of education. The institutional responsibility for the elimination of gender discrimination within the United Nations or in individual States is a cross-sectoral issue. The development of a common language guided by elimination of gender discrimination as the goal and yardstick is the necessary first step towards a comprehensive strategy.

B. Strategies to achieve universal primary education

20. No assessment of the global experience in realizing compulsory primary education free of charge can be optimistic. Challenges for the future are formidable. Suffice it to recall that the 1990 Jomtien Conference was convened against the diminishing coverage of primary education in the 1980s, especially in Africa, and the Governments' reduced capacity to halt further retrogression. The Jomtien Conference was a historic event intended to enhance priority for basic education through global mobilization around time-bound targets. The Jomtien+5 meeting noted that "the downward trend of falling enrolments that we witnessed during the 1980s has been reversed". 8/ Reversing the retrogression of the 1980s necessitated domestic and international changes. While individual Governments were traditionally deemed capable of complying with their human rights obligations if they exhibited the necessary political will, the tumultuous 1980s showed that the political will of many Governments of developing countries was no longer sufficient. A great deal of global mobilization, within and outside the United Nations, was necessary to "adjust adjustment", to challenge and change the previous status of social investment, including primary education. The model of the 1980s had often treated the right to education as an unaffordable luxury, openly contradicting human rights obligations. Changes started in early 1990s, with the World Bank elevating the status of social expenditure in 1992 and establishing the Inspection Panel in 1993. 9/ While these changes give ground for cautious optimism, the recorded decline of lending for education in general and to Africa in particular point in the opposite direction. 10/ The Special Rapporteur plans to analyse the current policy and practice of the World Bank in the field of education, as well as their gender dimensions, in her progress report.

21. Following the Commission's emphasis on assistance to Governments in developing and putting into practice strategies aimed at making primary education universal and free, the Special Rapporteur plans to carry out a comprehensive analysis of the evolving policy and pattern of aid for education as a method of enhancing the capacity of Governments to fulfil their obligation corresponding to the right to education. The Jomtien Conference had inspired more than 100 Governments to elaborate Education for All strategies, and half of them secured international financial support for their implementation. International and foreign funding has remained, however, at no more than 3 per cent of national education budgets.

22. An increased proportion of aid has been allocated to education in the 1990s; bilateral aid for education grew from 9 to 11 per cent but remains much lower than the 25 per cent recommended by the UNESCO Commission. 11/ Moreover, with the steady decline of the overall volume of aid in the second half of the 1990s, aid for education did not increase in absolute terms.

23. Bilateral allocations to education range from a low 3 per cent to a high 34 per cent and are presented in Table 1. Details on the allocations within education are not yet available for all donors but, where available, show that basic education attracts merely one tenth, with only Germany, Sweden, Australia and the United States of America above that average. In her progress report, the Special Rapporteur shall analyse the policy and practice of bilateral and multilateral aid for education, including the status of basic education within it. Links between aid for education and gender policies will constitute a particular focus of her analysis.

Table 1. Bilateral aid for education

Donor country	Bilateral allocation to education (in per cent)
New Zealand	34.4
Australia	23.5
France	21.7
Austria	18.1
Ireland	18.0
Germany	17.8
Portugal	17.6
Belgium	13.8
Luxembourg	12.2
United Kingdom	10.1
Japan	8.9
Canada	8.8
Sweden	8.4
Spain	8.3
Finland	6.6
Italy	5.9
Netherlands	5.5
Denmark	5.2
United States of America	4.8
Norway	3.0
Switzerland	3.0

Source: OECD/DAC, Development Co-operation, 1997 Report, Paris, 1998, Table A45.

24. The potential of the 20/20 Initiative 12/ as a model of partnership based on the mutual commitment to prioritizing investment in social development, including basic education, merits particular attention. Such a mutual commitment reinforces the original idea of international cooperation as a method for the realization of human rights from the Charter of the United Nations. Moreover, its emphasis on basic education aims to remedy the proverbial imbalance in the allocation of resources in favour of non-basic, especially university education. If the claim of the 20/20 Initiative that "adequate resources for basic social services can be accommodated even under conditions of fiscal constraint" 13/ proves well founded, it will relieve from anxiety all those, including the Special Rapporteur, who fear that additional

funding is necessary to achieve basic education for all. The Special Rapporteur plans to carry out an in-depth study in 1999 and present her findings in the progress report.

C. Quantitative and qualitative data necessary for monitoring the right to education

25. A comprehensive policy for the full realization of the right to education is necessary for a design of an integrated monitoring mechanism. Such a policy is long overdue and the Special Rapporteur shall strive to contribute to its development. A unique task of Governments is to elaborate educational strategy, regulate education by setting and enforcing minimum standards, and carry out permanent monitoring and corrective action. This task, carried out by Governments collectively and individually, forms the background against which monitoring mechanisms are established. The challenge for the human rights advocates is to integrate the human rights dimensions of education, including the principle of non-discrimination, into educational strategies and monitoring mechanisms because the existing ones are not derived from international human rights law.

26. A merger between quantitative and qualitative data is necessary to assess the state of realization of the right to education worldwide, as the Commission requested.

27. The Special Rapporteur has therefore started reviewing the work of human rights treaty bodies relating to the right to education in order to analyse their interpretations of this right. She is collecting and analysing international and domestic jurisprudence relating to the right to education with the aim of supplementing the existing quantitative data with qualitative data on the nature and scope of the right to education in the practice of States. Moreover, even a casual overview of the work of other Special Rapporteurs demonstrates the wealth of information that is already available. Their coverage ranges from denials of freedom to establish schools, to obstacles for education in minority languages, to the role of education in preventing child exploitation and trafficking in children, or to the policies of individual States concerning the financing of primary education. Many facets of the right to education are thus being addressed by various human rights organs and mechanisms and form the basis for analysing its nature and scope.

28. The emphasis of the United Nations bodies working in education on the universal coverage of primary school ("getting all children to school") ought to be complemented by the parallel emphasis on the parental freedom of choice under international human rights law. Alongside human rights treaty bodies with the global reach, jurisprudence has thus far been generated within the Council of Europe and possibilities have been created under the African Charter on Human and Peoples' Rights. The Protocol of San Salvador 14/ is likely to generate jurisprudence within the Inter-American human rights system. The Special Rapporteur plans to review the experience of all regional systems in the interpretation and application of the right to education and include the findings in her final report. Her objective is to design a comprehensive monitoring scheme for the right to education.

29. Differences between monitoring education and monitoring the right to education can be illustrated by taking school enrolment statistics as an example. They are available for a large number of countries and are widely used as a yardstick to assess progress and retrogression in access to education. Figures reflect registration of pupils at the beginning of a school year and not school attendance. Data on enrolments are disaggregated by sex but drop-out and repetition rates are not. Drop-out rates may amount to more than half of the originally registered pupils, repetition rates may exceed one third. These are not yet disaggregated by sex and progress - or retrogression - in equalizing the completion of primary school by girls and cannot be monitored as yet globally, although UNICEF is steadily moving towards making such monitoring possible.

30. Moreover, enrolment data disaggregated by other internationally prohibited grounds of discrimination are not yet being compiled. Evidence that this is necessary is available. The 1997 Report on the World Social Situation does not use human rights language but acknowledges that "in almost all multi-ethnic countries the drop-out rates among some ethnic minorities are higher than that of dominant groups". 15/

31. Yet another human rights dimension of the right to education is not captured in the existing education statistics. Enrolment statistics tell us the number of children who are at school (or at least who registered at the beginning of school year) but not how many should be at school. This is a consequence of a high, but unknown, number of children who are not registered at birth, which is cloaked underneath the admirable capacity of international agencies to estimate their numbers.

D. Financial obstacles impeding access to primary school

32. The Commission defined the first substantive task of the Special Rapporteur as reporting on the status of the progressive realization of the right to education with a special emphasis on access to primary education. The Commission recognized the need to openly identify difficulties encountered in the realization of the right to education and the Special Rapporteur plans to review the existing state of knowledge about these obstacles. In her progress report, she will focus on school fees in primary school. These may be named differently as, inter alia, user charges, registration fees, or school maintenance levies, but whatever name they bear, their effect is to openly question the explicit intent of human rights law that primary education should be free.

33. The international human rights treaties posit that primary education should be free, with the exception of the European Convention on Human Rights. 16/ The requirement that primary education should be made free has not been repeated in recent international policies on education, however. The 1990 Jomtien Declaration significantly did not include such a requirement. 17/ The Jomtien Declaration used terms such as "access to education" or "meeting learning needs" instead of the right to education. Since the Jomtien Declaration was adopted less than one year after the Convention on the Rights of the Child, the two divergent approaches have impeded a uniform United Nations policy. Table 2 reproduces available data on the public expenditure on education with countries classified by its

proportion to the GNP. The purpose is to illustrate the convergence and divergence in the current pattern of expenditure worldwide. The figures are, of course, an indication of magnitude rather than precise measurements because of the immense complexity of compiling all necessary data and making such data comparable. In her progress report, the Special Rapporteur intends to analyse allocations to education as well as within education, and the policies and practices of international financial agencies concerning these allocations.

Table 2. Public expenditure on education in relation to GNP

More than 7 per cent of GNP	Barbados, Botswana, Canada, Denmark, Estonia, Finland, Jamaica, Kenya, Maldives, Namibia, Norway, Seychelles, St. Lucia, Swaziland, Sweden, Tajikistan, Ukraine, Uzbekistan, Yemen, Zimbabwe
Between 6 and 7 per cent	Belize, Bolivia, Czech Republic, Hungary, Ireland, Israel, Jordan, Kiribati, Kyrgyzstan, Latvia, Lithuania, Moldova, New Zealand, South Africa, Tunisia
Between 5 and 6 per cent	Australia, Austria, Belarus, Belgium, Congo, Croatia, Egypt, Fiji, France, former Yugoslav Republic of Macedonia, Gambia, Georgia, Iceland, Kuwait, Lesotho, Malawi, Malaysia, Malta, Mauritania, Mexico, Mongolia, Morocco, Netherlands, Panama, Portugal, Saudi Arabia, Slovakia, Slovenia, Spain, Switzerland, Togo, United Kingdom, United States of America, Venezuela
Between 4 and 5 per cent	Argentina, Bahrain, Bulgaria, Costa Rica, Cyprus, Ethiopia, Germany, Guyana, Iran, Italy, Kazakhstan, Mauritius, Oman, Poland, Russia, Thailand, Tonga, Trinidad and Tobago, Vanuatu
Between 3 and 4 per cent	Albania, Azerbaijan, Benin, Burkina Faso, Colombia, Comoros, Ecuador, Greece, Honduras, India, Japan, Korea, Peru, Qatar, Romania, Senegal, Singapore, Sri Lanka, St. Kitts and Nevis, Suriname, Turkey
Between 2 and 3 per cent	Bangladesh, Burundi, Chad, China, Chile, El Salvador, Laos, Lebanon, Mali, Nepal, Paraguay, Philippines, Uruguay, Viet Nam
Less than 2 per cent	Dominican Republic, Equatorial Guinea, Guatemala, Myanmar, United Arab Emirates, Zambia

Source: UNESCO, World Education Report 1998, pp. 156-159.

34. There is a great deal of disagreement about the optimal level of public expenditure for education. Proposals tend to converge at about 5-7 per cent

and reflect the practice of a large number of States. The absence of consensus around such a figure does not prevent, however, increasing agreement on three points. First, that public investment in primary education is necessary; second, "primary education ought to be a priority for public spending on education in those countries that have low net enrolment," 18/ and, third, allocations within education ought to prioritize primary education. Many States in which public expenditure for education is low, listed in the bottom part of Table 2, tend to exhibit also low enrolments at the primary school level.

35. Primary education should be free for children because they cannot possibly pay for themselves. This does not imply that education is free because schools and teachers' salaries have to be financed, it implies that primary education has to be prioritized in resource allocation. Direct charges in primary education, under whatever name, impose upon parents the obligation to fully finance the education of their children. The duty to financially contribute to the cost of primary education for all is spread among the whole population where education is financed by the State out of general taxation. Taxation exempts the poorest; those who do not earn enough to be liable to taxation are not taxed. Where fees are charged in primary school, those who are too poor to afford the cost are often not exempt from charges. Where exemptions are nominally provided for, they may be too cumbersome to comply with or too expensive to administer. The Convention on the Rights of the Child specifies for health that children should not be denied access to health services because of the inability of their parents to pay; one cannot find any indication that the Convention envisaged a lower standard to apply to primary education. The Committee on the Rights of the Child included in the reporting guidelines an item on "the measures taken to ensure that children, particularly those belonging to the most disadvantaged groups, are protected against the adverse effects of economic policies, including the reduction of budgetary allocations in the social sector." 19/

36. Reduced budgetary allocations led to a shift to cost-sharing, which has generated a great deal of opposition, especially for primary education. The Addis Ababa Consensus has emphasized the need to focus on government revenue, especially taxation, 20/ as the source of funding for basic education rather than cost-sharing or cost-recovery.

37. The absence of an enforceable claim upon a Government to allocate a specific amount to education highlights the need to focus on the procedure whereby allocations are decided upon. Human rights are seldom costed because human rights standards do not determine how much should be spent on specific items, but define substantive and procedural human rights standards, including for the process of decision-making. The exercise of political rights thus becomes the necessary instrument for attaining economic and social rights, imposing upon those who exercise them a duty towards others. University students are politically vocal, primary school age children are not, and the latter can easily be neglected in the allocation of resources. The proverbial preference for university students in budgetary allocations within education (in the extreme exceeding up to 1,000 times the allocation for primary education) vividly illustrates the necessity for introducing the human rights rationale into allocations. The Special Rapporteur feels that such a rationale could be introduced throughout the process of resource allocation,

from the policies of international finance agencies, 21/ to the domestic decision-making process, as well as inter- and intra-sectoral allocations.

38. Allocation of resources within education is often seen as a zero-sum game: increased allocation to primary education depletes higher levels of education of public funding with the corollary of increasing its cost for students and their families. Human rights education would face a considerable challenge if it ventured to reconcile, for example, an acquired right to free education for university students which may be depriving young children of access to any education whatsoever. How does one ensure that a culture of acquired rights is not reinforced through human rights education that only emphasizes one's own rights? Is there a way out of such proverbial zero-sum game that pits beneficiaries of public funding for education against each other? Can children enjoy their rights if adults do not accept their duties towards children? Such questions, in the opinion of the Special Rapporteur, merit an inquiry to find out how these dilemmas have been addressed, domestically and internationally.

39. The question of State funding for education necessitates inquiring into the societal acceptance - or the lack thereof - of the State's powers to raise revenue, including through taxation. A great deal of controversy has been generated with respect to the interpretation of the States' obligation to finance primary education. The requirement that primary schooling should be free of financial cost for the child has generated a great deal of consensus, but the requirement that primary school should also be free of financial cost for parents does not generate full consensus. One reason is the parental primary responsibility, financial as well as any other, for their children, affirmed in the Convention on the Rights of the Child. The Committee on the Rights of the Child asks reporting States to include their consideration of "the real cost for the family of the child's education." 22/

40. Official statistics on the costs of education are confined to public expenditure and exclude parental financial contribution to the education of their children. These costs are considerable even where no fee is charged in primary school. Mark Bray estimates that at least 20 per cent and often as much as 90 per cent of the financial cost of primary education is borne by the parents and/or families. 23/ Where no fee is charged in primary school, parents often have to pay the costs of school maintenance or make other financial contributions to the school or to the teachers. Even where these are absent, parents bear the costs associated with schooling such as books, meals, transportation or uniforms.

41. Any analysis of parental financial contributions towards primary education of their children ought to differentiate between their willingness and ability to contribute. Their inability to afford sending their children to school deprives children of access to primary education and highlights the essence of States' human rights obligations to be the provider of last resort. Parental choice may be exercised to the detriment of girls and requires States to act so as to alter the factors upon which parental choices are made. Efforts to increase primary school enrolment for girls have thus included subsidizing direct, indirect, and opportunity cost (namely, the loss of the value of the girls' work) for their parents and/or families.

II. GOVERNMENTAL OBLIGATIONS COROLLARY TO THE RIGHT TO EDUCATION: A TENTATIVE ANALYTICAL SCHEME

42. The starting point for the Special Rapporteur's analysis is the thrust of international human rights law whereby governmental obligations relate to human rights as whole, and include obligations to act and to react, to pursue specific conduct or to achieve a particular result. The basic framework of governmental obligations is outlined by a series of explicit guarantees of the right to education. The essential role of the State is to set educational strategy, determine and enforce educational standards, monitor the implementation of the strategy and put in place corrective action. Neither educational strategy nor educational standards are necessarily informed by the right to education; "education" and "human rights" are often separated both in law and in practice while "gender" is often yet another separate category. The Special Rapporteur plans a comprehensive analysis in her subsequent reports. At this stage, she only wants to map out the complexity of the existing human rights framework.

43. The International Covenant on Economic, Social and Cultural Rights prompted more than a dozen parties to submit reservations to its provision on the right to education, which ranges from acknowledgments that financial constraints to access to primary education were beyond the capacity of the State, to assertions that education should be treated as monopoly of the State, or that parents should be allowed to educate their children themselves, in their own home. 24/ The Convention on the Rights of the Child lays down the full scope of the right to education. The principle of non-discrimination is followed by general provisions on the access to education, its purpose and objectives, accompanied by specific requirements upon education to protect children from abuse and neglect or illicit use of narcotic drugs, and followed by safeguards against work that interferes with children's primary education. An illustration of the demanding nature and scope of States' obligations concerning education is the number and variety of reservations. 25/ They highlight the necessity of a continued effort to conceptualize governmental obligations so as to forge a global consensus.

44. Table 3 illustrates the two pillars of States' human rights obligations relating to education. The first obligation concerns enabling all children to benefit from primary education, enforcing access to school and school attendance by making primary education compulsory, and ensuring that primary education is free of charge. The last point is not shared among all regional human rights treaties, as Table 3 illustrates by including the European Convention because of its departure from other human rights treaties. The second obligation is shared among all human rights treaties and requires respect of parental freedom of choice.

45. The State's obligation to make primary education free of charge is frequently, albeit erroneously, associated with the State's provision of primary education. The State's obligation to make primary education free is in quite a few countries implemented through subsidies to a diverse range of primary schools.

46. Some countries have only public schools, others only private, while most have a mixture. The meaning of "private" varies a great deal. In its

broadest sense, it encompasses all non-State-run schools, some of which may actually be partially or even fully funded by the State. The assumption behind the term "private" is that all such schools are profit-making while many are not. The term is applied to formal and non-formal education, religious and secular schools, minority and indigenous schools, as well as schools for children with special needs.

Table 3. Primary education: specific human rights guarantees

Universal Declaration of Human Rights:	Universal Declaration of Human Rights:
Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.	Parents have a prior right to choose the kind of education that shall be given to their children.
International Covenant on Economic, Social and Cultural Rights:	International Covenant on Economic, Social and Cultural Rights:
Primary education shall be compulsory and available free for all.	The States Parties to the present Covenant undertake to have respect for the liberty of parents ... to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, ...
	International Covenant on Civil and Political Rights: The States Parties to the present Covenant undertake to have respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions.

Convention on the Rights of the Child:	Convention on the Rights of the Child:
States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:	No part of [articles 28 and 29] shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions ...
(a) Make primary education compulsory and available free for all.	
UNESCO Convention against Discrimination in Education:	UNESCO Convention against Discrimination in Education:
The States Parties to this Convention undertake to formulate, develop and apply a national policy which, ... will tend to promote equality of opportunity and of treatment ... and in particular: (a) to make primary education free and compulsory.	The States Parties to this Convention agree that: (b) It is essential to respect the liberty of parents, ... firstly to choose for their children institutions other than those maintained by the public authorities but conforming to ... minimum educational standards, and secondly, to ensure ... the religious and moral education of the children in conformity with their own convictions.
European Convention, Protocol 1:	European Convention, Protocol 1:
No person shall be denied the right to education.	In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

47. Some private schools are supplementing State-run schools and are established where they do not provide education in a particular minority language or religion, or do not accommodate children with physical or learning disabilities. Others are established as an alternative to State-provided education.

48. Parental freedom to opt out of State-run schools has been subject to a great deal of litigation. The Human Rights Committee has held that the State does not discriminate when subsidies for private schools are lower than those for public schools. 26/ The European Commission on Human Rights has held that States were not required to "subsidize private education of a particular type or level." 27/

49. The Special Rapporteur plans to analyse the States' practice in more detail and include the findings in her final report. She intends to review the existing quantitative and qualitative data on the pattern of primary schools (State/non-State, public/private, for-profit/non-profit/religious/secular) in different regions and countries, as well as the existing domestic and international jurisprudence concerning the freedom to establish and operate non-State schools and States' practice with regard to funding of non-State primary schools.

50. All three different roles of the State in primary education - regulation, funding, and provision - should be informed by a range of human rights obligations upon which primary education should be based, such as the principle of non-discrimination. To portray the complexity of Governmental obligations corresponding to the right to education, the Special Rapporteur has structured them into a 4-A scheme, denoting the four essential features that primary schools should exhibit, namely availability, accessibility, acceptability and adaptability.

A. Availability

51. The first State obligation relates to ensuring that primary schools are available for all children, which necessitates a considerable investment. While the State is not the only investor, international human rights law obliges it to be the investor of last resort so as to ensure that primary schools are available for all school-age children. In Africa children of primary-school age constitute close to half of the population and the majority is living in rural areas. Making primary schools available to dispersed rural communities, some of who may be nomadic, illustrates the scope of the challenge.

52. If the intake capacity of primary schools is below the number of primary-school aged children, legal provisions on compulsory education will not be translated into practice and access to education will remain a need or a wish rather than being a right. Investment in educational infrastructure requires considerable initial capital but yields benefits after a long time. The recurrent costs and maintenance of schools as well as teachers' salaries add to the cost. The full scope of investment necessary to make schools really rather than nominally available is hidden because the most frequent internationally used indicator - enrolment - does not capture what a real-life school may look like. A UNESCO/UNICEF pilot survey of primary schools in the least developed countries has revealed that electricity or piped water is an exception rather than a rule, while many children finish primary school without ever having seen a single textbook in their mother tongue. 28/ Changing this reality is necessary because nominally available schools are unlikely to attract children, as evidenced in parental assessments that their children would not benefit from schooling in such conditions or in children "voting with their feet" and opting out of school.

53. An interplay between non-availability of schools and parental choices often impedes the schooling of girls. There is a great deal of research targeting parental choices, but a paucity of information about the availability of schools for girls. Available schools may be open only to

boys - by law, in fact - while the existing educational statistics do not make this difference visible. It is impossible to determine whether the available schools have a sufficient intake capacity to enrol and retain all primary age school girls or not.

54. Programmes to remedy unequal enrolment of girls in primary school have encompassed both inducements to their parents and/or families and increasing the availability of schools for girls. The former is dealt with in the next section, the latter has included requirements upon primary schools to enroll a specific percentage of girls, establishment of special schools for girls, or the recruitment and training of female teachers. Experiences have shown that such initiatives yield results although the mid-decade review of Education for All found that "the gender gap in age-specific net enrolment ratios actually grew worse in the 1990s, except in the Arab States." 29/

55. Table 4 summarizes data compiled by UNICEF on the gender imbalance in net enrolment in primary school. This issue cuts across availability of school and access to the available schools by girls. In situations where schools are simply not available, most children will not have access to primary education. However, where too few schools are available they are obviously not equally available to girls. The gender gap diminishes with increased availability of schools and in quite a few countries girls' enrolment is higher than that of boys.

Table 4: Gender imbalance in net enrolment in primary school

Girls' enrolment as surplus or deficit in relation to boys' enrolment (in per cent)

More than + 10 per cent	Lesotho (+ 11 per cent), Trinidad and Tobago (+ 11 per cent)
+ 3 per cent to + 9 per cent	Mongolia (+ 3 per cent), Nicaragua (+ 3 per cent), Bahamas (+ 4 per cent), Dominican Republic (+ 4 per cent), Botswana (+ 5 per cent), Namibia (+ 7 per cent).
+ 1 per cent to + 2 per cent	Albania, Bahrain, Costa Rica, Denmark, Ecuador, El Salvador, Estonia, Fiji, Georgia, Haiti, Honduras, Hungary, Korea, Luxembourg, Malaysia, Panama, South Africa, United States of America, Yugoslavia
- 1 per cent to - 2 per cent	Belize, Bulgaria, Canada, Chile, China, Croatia, Former Yugoslav Republic of Macedonia, Guyana, Libya, Madagascar, Malta, Oman, Peru, Philippines, Poland, Qatar, Samoa, Saudi Arabia, Slovenia, Tanzania, United Arab Emirates, Zambia
- 3 per cent to - 5 per cent	Belarus, Eritrea, Indonesia, Kenya, Kyrgyzstan, Latvia, Somalia, Tunisia, Turkey, Vanuatu, Venezuela

- 6 per cent to - 9 per cent	Congo (- 6 per cent), Uganda (- 7 per cent), Algeria (- 8 per cent), Bangladesh (- 8 per cent), Bolivia (- 8 per cent), Burundi (- 8 per cent), Syria (- 8 per cent), Ethiopia (- 9 per cent), Djibouti (- 9 per cent), Iraq (- 9 per cent), Mauritania (- 9 per cent),
- 10 per cent to - 20 per cent	Cameroon (- 10 per cent), Comoros (- 10 per cent), Mozambique (- 10 per cent), Mali (- 11 per cent), Papua New Guinea (- 12 per cent), Senegal (- 12 per cent), Burkina Faso (- 13 per cent), Egypt (- 13 per cent), Iran (- 13 per cent), Laos (- 14 per cent), Niger (- 14 per cent), Gambia (- 18 per cent), Guinea (- 18 per cent), Morocco (- 19 per cent)
More than - 20 per cent	Democratic Republic of Congo (- 21 per cent), Central African Republic (- 22 per cent), Guinea-Bissau (- 26 per cent), Togo (- 26 per cent), Afghanistan (- 27 per cent), Chad (- 29 per cent), Benin (- 31 per cent), Nepal (- 39 per cent),

Note: In the following countries there is no difference between net primary school enrolment for boys and girls: Argentina, Australia, Austria, Barbados, Belgium, Brunei Darussalam, Cape Verde, Cuba, Cyprus, Czech Republic, Finland, France, Germany, Greece, Ireland, Jamaica, Japan, Jordan, Kuwait, Malawi, Mauritius, Netherlands, New Zealand, Norway, Paraguay, Portugal, Romania, Russia, Rwanda, Singapore, Spain, Sweden, Switzerland, United Kingdom and Uruguay.

Source: UNICEF, The State of the World's Children 1999, New York, 1998 pp. 106-109.

56. Table 4 confirms that the global pattern of gender imbalance victimizes girls. But it also illustrates the other side of the coin, namely the surplus of girls in the primary school in some countries. UNICEF noted that some primary schools, especially in the Caribbean, have difficulties in attracting and retaining boys, 30/ one reason being that teachers are dominantly female. The Special Rapporteur deems that a risk that one or two decades henceforth we might be designing strategies to increase the enrolment of boys highlights the necessity of articulating and implementing gender balance in the approach to the realization of the right to education. Leaving boys outside school may well become seen retrospectively as a criminogenic factor that we have inflicted upon ourselves through the lack of attention to gender balance in education. The well-known statistical profiling of criminality points to adolescent boys as the category most vulnerable to criminalization.

B. Accessibility

57. The second State obligation relates to ensuring access to available public schools, most importantly in accordance with the existing prohibition of discrimination. Non-discrimination is the overriding principle of

international human rights law and thus applies to civil and political, as well as to economic, social and cultural rights, as well as to the rights of the child which cut across these two categories. Non-discrimination is not subject to progressive realization but has to be secured immediately and fully.

58. In the field of education, there has been a great deal of concern regarding out-of-school children. Strategies and campaigns are often designed with the slogan "reaching the unreached". A crucial component which the human rights perspective introduces into this subject-matter relates to the difference between the unreached and the excluded. The lack of access to primary school may conform to the internationally prohibited grounds of discrimination when the excluded children share the same feature, be it sex, or language, or religion. Asylum-seeking and refugee children may be difficult to reach, but some may be excluded because the right to education is confined to citizens. Children with disabilities may be in practice excluded from school, whatever the law may say, because the buildings and classrooms make their access impossible. Children who are institutionalized may be excluded from schooling because the mandate and funding of the institution housing children excludes education.

59. The Special Rapporteur plans to collect and analyse the existing quantitative and qualitative information on the pattern of the lack of access to education in order to map out obstacles to the realization of the right to education. Within the United Nations, such information has thus far been systematically gathered only for girls and women.

60. With regard to girls, the right to education has been demonstrated to act as a corrective to the free market. Governments indeed have human rights obligations because primary education should not be treated as a commodity. There has been a growing acceptance of the necessity for States' intervention concerning access to primary education for girls. Many economists would refer to the reason for the State's intervention as a market failure. In its simplest version, it can be described as the unwillngness of parents to send their daughters to primary school because of the absence of an economic rationale to invest in their daughters' education. A demand for girls' education thus has to be created by providing economic incentives to parents. Such initiatives showed that conflicting expectations for girls deprive them of access to education. If they are required to perform household labour, the school schedule has to be adapted to the seasonal and daily rhythm of subsistence food production or family life. Since poor families depend on the work of each member of the family for their survival, combining school and work often proved necessary so as to make school really accessible for girls. Similarly, the ILO's experience in moving children from labour to school has demonstrated the advantage of shifting from the prohibitive and condemnatory approach to a human-rights-promoting investment. 31/ Enhancing children's access to school, as these examples illustrate, necessitates a considerable investment.

61. Such an investment goes beyond the financial resources needed to make primary education free. Early marriage and childbearing conflict with primary education and are often the main reasons for girls not completing primary education. The Charter on the Rights and Welfare of the African Child

requires States to ensure that girls who become mothers before completing their primary education "have an opportunity to continue with their education on the basis of their individual ability". 32/ Translating this obligation into practice often requires overcoming the denials of access to school for pregnant girls and very young mothers (when pregnancy is a disciplinary offence, for example), while overcoming this obstacle requires a well designed strategy for changing social norms through the mobilization of teachers, parents, community leaders, and pupils themselves.

C. Acceptability

62. Extreme views of the role of the State in education are embodied in treating the State as the sole funder and provider of education, with the other extreme deeming the State to be the regulator and facilitator rather than funder and provider. Much as in any other area, the extremes are rarely present in the States' practice and cloak the consensus around the regulatory role of the State, that is, its task to set and enforce educational standards. The right to education "by its very nature calls for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals". 33/ The State is obliged to ensure that all schools conform to the minimum criteria which it has developed as well as ascertaining that education is acceptable both to parents and to children.

63. Respect for parental freedom to have their children educated in conformity with their religious, moral or philosophical convictions has been affirmed in all general human rights treaties and is continuously subjected to litigation. The European Commission on Human Rights found that human rights law "requires the State actively to respect parental convictions within the public schools" 34/ in addition to the required respect of their liberty to establish and operate schools. The contents of educational curricula and textbooks raise endless controversies, but the existing jurisprudence demonstrates the increasing importance of human rights criteria in decision-making.

64. The language of instruction can preclude children from attending school. It has always created a great deal of controversy in education and this is not likely to diminish, on the contrary. Controversies span decision-making on the official language(s) of instruction for public schools, the teaching of as well as teaching in minority languages (as well as the recognition thereof), and the teaching of (as well as in) foreign languages.

65. The European Court of Human Rights has affirmed the right of the State to determine official languages of the country which are thus the languages of instruction in public schools but denied that there was a right to education in a language of one's choice. 35/ States have been required to respect the right of minorities to set up their own schools in minority languages since the time of the League of Nations. In 1919 the precedent was set by Poland in affirming, alongside education in minority languages in public schools, the right of citizens who were members of minorities to establish, manage and control schools at their own expense "with the right to use their own language and to exercise their religion freely therein" 36/ and that right was reaffirmed by the Permanent Court of International Justice. 37/

66. More than half a century later, dilemmas have increased rather than diminished. Demands that minority schools be made "free" (that is, State-financed) are often made but seldom granted. The right to be educated in one's mother tongue has been on the international human rights agenda since the 1950s and controversies intensified in the 1990s. The wisdom of unilingual education, even in one's mother tongue, has been challenged, adding a new item to this endless controversy. The financial implications of multilingualism in primary school have further exacerbated the existing controversies. The Special Rapporteur plans to analyse the existing experiences and summarize the findings in her final report.

67. From the rights of the child perspective, the obligation to make primary school acceptable goes far beyond parental freedom of choice or the language of instruction, and poses a great deal of challenge for all States. An ideal primary school should be child-friendly, based on the right of the child "to be curious, to ask questions and receive answers, to argue and disagree, to test and make mistakes, to know and not know, to create and be spontaneous, to be recognized and respected". 38/ The enormity of the task embodied in this vision clashes with the reality of schools that may be grappling with the lack of running water and sanitation, with the incompatibility of the school timetable with family and community life, or with violence against and among children.

68. Restrictions upon school discipline have considerably increased in recent decades to protect the child's dignity against humiliation or degradation. They were, and are likely to remain, subject to litigation. An attempt by parents (whose religious doctrine posited physical punishment of children as legitimate and necessary) to challenge Sweden's policy against corporal punishment of children forced the European Commission on Human Rights to revisit the issue that had already been the object of considerable litigation. The parents complained against the encroachment upon their "ability to express and implement their own convictions in the upbringing of their children" embodied in Sweden's 1979 law, which was "intended to encourage a reappraisal of the corporal punishment of children in order to discourage abuse". 39/ The Commission did not find that a general policy against corporal punishment amounted to a threat of indoctrination of children against their parents' conviction that corporal punishment was legitimate and necessary. The Committee on the Rights of the Child has consistently held that corporal punishment is incompatible with the Convention on the Rights of the Child, although the Committee's frequent reiteration of that view testifies to the fact that corporal punishment may be practised to discipline schoolchildren in many countries.

69. The importance of a vision of primary school in which all the rights of the child are fully implemented is to define the ultimate goal to be attained, without which a precise definition of the full realization of the right to education remains impossible.

D. Adaptability

70. What children should learn at school and how the learning process should be organized is the source of never-ending challenge and change. The usual approach is to review the contents and process of learning from the viewpoint

of the child as future adult, while the Convention on the Rights of the Child requires that the best interests of the child be given prominence. The choice in the Convention to refer to the best interests of the individual child highlights the need for the educational system to become and remain adaptable.

71. The countervailing pressures of globalization and localization in the 1990s highlight the need for adaptability. International flows of capital, information and trade are countered by the process of decentralization and/or localization in education, which facilitates responsivness to the local needs and affirmations of specific ethnic or linguistic or religious identities. Making education responsive to the immediate reality facing children in their own community and to the rapidly changing global realities is the challenge of the 1990s. Different ideas are being experimented with to move away from "the classroom-centred model designed to service a pre-industrial European society" 40/ that has remained the model for designing primary education much too long.

72. The knowledge, skills and values that the generation of future adults will need in their lifetime is not only unknown but unknowable. A balance between the exposure of children to the local and global community is complemented by their need to familiarize themselves with their own as well as foreign cultures. A focus on human rights education provides an opportunity to balance the previously prohibitory approach in international human rights law by a constructive one. A great deal of effort has targeted the prohibition of incitement to discrimination through prejudicial portrayal of racial or ethnic minorities, or migrants, or women and girls. An endless stream of projects aim at the revision of the existing curricula and textbooks or the creation of new ones so as to convey positive images rather than merely prohibiting negative ones. The International Commission on Education for the Twenty-first Century singled out as the first pillar upon which education should be founded "learning to live together by developing an understanding of others and their history, traditions and spiritual values". 41/ The ILO Convention No. 169 on indigenous rights posits the aim that "history textbooks and other educational materials provide a fair, accurate and informative portrayal" of indigenous peoples. 42/ One may anticipate that this process will encompass a review of the portrayal of indigenous women as well as men. The Committee on the Rights of the Child urged a changed image of women "in school textbooks by adopting suitable messages to combat inequalities, stereotypes and social apathy". 43/ The Convention against Racial Discrimination requires States to combat prejudices through education, the Convention on the Elimination of All Forms of Discrimination against Women to eliminate stereotypes. A recognition of the fact that women can be victimized by discrimination because of their race as well as sex, or because they are indigenous as well as female has become a noticeable feature of the 1990s. The process of revising school curricula goes on in quite a few countries so as to identify and replace discriminatory and/or stereotyped portrayal of girls and women. 44/

73. Promoting elimination of gender discrimination in education has become an area of rapid international, regional and domestic policy-making. A great deal of quantitative and qualitative data has been generated to document the plight of out-of-school girls while reviews of school curricula and textbooks promise to change the image of girls and women and thus help the new

generation avoid the stereotypes that we have all been raised with. Changes in the contents of education in the past few decades have been profound: from educating girls to be good housewives to freeing them from gender stereotypes to enable them to freely develop. The role of teachers is crucial and highlights gender imbalance in primary education - the absence of female teachers in some countries and their prevalence in others as illustrated in Table 5.

Table 5. Percentage of primary school teachers who are female

Above 90 per cent	Armenia, Bahamas, Georgia, Kazakhstan, Mongolia, Czech Republic, Italy, Latvia, Lithuania, Moldova, Russia, Slovakia, Slovenia, Ukraine
Between 75 per cent and 90 per cent	Australia, Austria, Azerbaijan, Botswana, Bulgaria, Colombia, Croatia, Cuba, Dominica, Estonia, France, Germany, Guyana, Hungary, Ireland, Israel, Jamaica, Kyrgyzstan, Lesotho, Malta, New Zealand, Nicaragua, Qatar, Romania, San Marino, Seychelles, Sri Lanka, Suriname, Saint Kitts and Nevis, Saint Lucia, Swaziland, United Kingdom, Uzbekistan, Venezuela, United States of America, Yugoslavia
Between 50 and 75 per cent	Albania, Bahrain, Belgium, Belize, Brunei Darussalam, Canada, Cape Verde, Chile, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, Fiji, former Yugoslav Republic of Macedonia, Greece, Grenada, Honduras, Indonesia, Iran, Iraq, Japan, Jordan, Kiribati, Korea, Kuwait, Madagascar, Malaysia, Myanmar, Namibia, Netherlands, Paraguay, Peru, Samoa, Saudia Arabia, South Africa, Spain, Saint Vincent and the Grenadines, Sudan, Sweden, Switzerland, Syria, Tajikistan, Tonga, Trinidad and Tobago, United Arab Emirates
Between 25 and 50 per cent	Afghanistan, Algeria, Burundi, Cambodia, Cameroon, China, Congo, Djibouti, Eritrea, Ethiopia, Gabon, India, Kenya, Laos, Malawi, Mauritius, Morocco, Niger, Nigeria, Oman, Papua New Guinea, Tanzania, Tunisia, Turkey, Uganda, Vanuatu, Zambia, Zimbabwe
Below 25 per cent	Benin, Burkina Faso, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Guinea, Mali, Mauritania, Mozambique, Nepal, Pakistan, Senegal, Togo

Source: UNESCO, World Education Report 1998, pp. 144-147; the figures refer to 1995.

74. These two extremes highlight the necessity of adaptability: many international and domestic policies have been developed to increase the number of female teachers, but few to address the other extreme. There are few countries in the world that have established a policy of gender balance, namely the objective that the representation of one sex should not exceed 40 per cent without corrective measures being triggered. Table 5 shows that women constitute more than two-thirds or even more than four-fifths of primary schoolteachers in some countries. The risk of perpetuating marginalization rather than promoting equality was noted 40 years ago, in the very first report on discrimination in education within the United Nations. The report summarized reasons for women forming the majority of teachers in primary school as "the idea that women are particularly well suited to teach young children, the fact that teaching offers an outlet to women to whom many other careers remain closed, and the fact that men are attracted towards better paid professions". 45/

III. COMPULSORY EDUCATION: RIGHT AND DUTY OF THE CHILD

75. The 1959 Declaration of the Rights of the Child laid down the entitlement of the child to receive education, 46/ articulating the vision of the child of the time as a passive recipient of education rather than the principal subject of the right to education. The changed vision of the child as a subject of rights embodied in the Convention on the Rights of the Child is slowly being translated into domestic laws and policies. Compulsory education has been included in the Convention on the Rights of the Child because of its undoubted value, but it is much older that the concept of the rights of the child and reflects the vision of the child as a recipient of education, which can be imposed upon the child. Indeed the corollary of the governmental obligation to make primary education compulsory is the duty of the child to attend school. The Convention on the Rights of the Child presents a challenge to make compulsory education fully consistent with the full range of the rights of the child.

76. Table 6 presents a bird's-eye view of compulsory education by categorizing countries in which primary education has been made compulsory according to its duration from 3 to 12 years.

77. The capacity of Governments to implement compulsory school laws varies as do enforcement measures. Many target parents in the form of fines for their failure to secure enrolment or school attendance by their children. Some target children, however. Enforcement of compulsory education thus raises important human rights issues. The Convention on the Rights of the Child goes no further than obligating States to encourage school attendance; enforcement is not mentioned. Older human rights treaties, such as the European Convention on Human Rights, provided for detention of a minor by lawful order for the purpose of educational supervision, which mandated compulsory schooling in the narrowest sense of this term. The specific offence of truancy was created to punish the child for breaching the duty to attend school.

Table 6. Compulsory education

Duration in years	Country
12	Bahrain, Barbados, Belgium, Brunei Darussalam, Germany, Saint Kitts and Nevis
11	Antigua and Barbuda, Azerbaijan, Grenada, Israel, Kazakhstan, Malaysia, Moldova, Netherlands, New Zealand, Sri Lanka, Suriname, United Kingdom
10	Australia, Bahamas, Belize, Canada, Congo, Cook Islands, Dominica, France, Gabon, Guyana, Hungary, Jordan, Kyrgyzstan, Malta, Monaco, Namibia, South Africa, Spain, Saint Lucia, Venezuela, United States of America
9	Algeria, Armenia, Austria, Belarus, China, Comoros, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Democratic People's Republic of Korea, El Salvador, Estonia, Finland, Georgia, Ghana, Greece, Ireland, Japan, Kiribati, Korea, Latvia, Liberia, Libya, Lithuania, Luxembourg, Mali, Norway, Portugal, Russian Federation, Seychelles, Slovakia, Sweden, Switzerland, Tajikistan, Tunisia, Tuvalu, Yemen
8	Albania, Angola, Bolivia, Brazil, Bulgaria, Chad, Chile, Croatia, Egypt, former Yugoslav Republic of Macedonia, Iceland, India, Italy, Kenya, Kuwait, Malawi, Mongolia, Niger, Poland, Romania, Samoa, San Marino, Slovenia, Somalia, Sudan, Tonga, Ukraine, Yugoslavia
7	Argentina, Eritrea, Lesotho, Mauritius, Mozambique, Rwanda, Swaziland, Tanzania, Trinidad and Tobago
6	Afghanistan, Benin, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Ecuador, Ethiopia, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Indonesia, Iraq, Jamaica, Mauritania, Mexico, Morocco, Nicaragua, Nigeria, Panama, Paraguay, Peru, Philippines, Senegal, Syria, Thailand, Togo, United Arab Emirates, Uruguay, Vanuatu
5	Bangladesh, Colombia, Equatorial Guinea, Iran, Laos, Madagascar, Myanmar, Nepal, Turkey, Viet Nam, Zimbabwe
4	Sao Tome and Principe
3	Zambia

Source: UNESCO, World Education Report 1998, pp. 132-135.

Note: In Botswana, Bhutan, Fiji, Gambia, Lebanon, Maldives, Oman, Qatar, Pakistan, Papua New Guinea, Saudi Arabia, Sierra Leone, Singapore, Solomon Islands and Uganda, education is not compulsory, according to information available from UNESCO, while its status was uncertain in Bosnia and Herzegovina, Saint Vincent and the Grenadines, Turkmenistan and Uzbekistan.

78. The prevalence of compulsory primary education in the States' practice provides evidence of the States' commitment to ensuring that all children benefit from it. The existence of compulsory education is, however, indicative of the realization of only one component of the right to education, parental freedom of choice might not be recognized. Moreover, an extreme situation might exist if primary education is compulsory, provided against the payment of a fee in a uniform State-run school system from which parents do not have freedom to opt out. Education would thus not be "free" in many different meanings of this term.

79. Although the child is today treated as the principal subject of the right to education, the child is not party to decision-making on the realization of the right to education. International human rights law divides decision-making between the parents and the State. Each principal actor can - and routinely does - claim to represent the best interest of the child. The child's right to education is reflected in the duty of the parents, community and the State to educate the child as well as the duty of children to educate themselves. The inter-generational dimension is evidenced in adults designing education in the best interests of the child and, as often as not, disagreeing among themselves as to what the best interest of the child may be.

IV. CONCLUDING REMARKS

80. The 1990s have been a time of crisis-driven change in education. Many Governments - not only in developing countries - have been struggling with debt pressure, budget deficits, stagnant or falling revenue, and a great deal of effort was expanded to seek other-than-governmental funding for education. Blueprints for educational reform have been discussed at the global level within UNESCO or the World Bank or the Organization for Economic Co-operation and Development, as well as in many individual countries. The approaching turn of the century has made obsolete the many strategies which had "by the year 2000" in their title and shifted attention to designs for the twenty-first century. Education is a long-term process and the commitment should be equally long term and the Special Rapporteur intends to concentrate on a long-term vision of an educational strategy grounded in the right to education.

81. In this preliminary report, the Special Rapporteur has mapped out a range of issues that merit immediate attention, described the approach she intends to pursue and the initial framework for her analysis. She has also identified a number of issues that necessitate further study and noted that her focus will be to elucidate the full scope of the right to education by seeking an answer to the question: When is the right to education fully realized? A clear definition of the nature and scope of the right to education demands an in-depth study of the experience in putting into practice requirements of the international human rights law in different regions and countries, where the realm of the possible is delineated by the minimum acceptable standards which should be sought worldwide and the full realization of the right to education as the maximum standard.

Notes

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4/ Commission on the Status of Women, "Agreed conclusions on the critical areas of concern", Draft resolution II forwarded to the Economic and Social Council, para. 3, Report on the forty-first session (10-21 March 1997) (E/1997/27 and E/CN.6/1997/9, p. 3).

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7/ "Integration of a gender perspective into United Nations technical cooperation in human rights", Working Paper by K. Tomaševski, Office of the High Commissioner for Human Rights, Technical Cooperation Programme, Project CLO/97/AHB/24, June 1998.

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